

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Mattoon Broadcasting Company)	File Numbers: EB-10-CG-0282
)	
Licensee of Stations WLBH and WLBH-FM)	NAL/Acct. No.: 201132320002
Mattoon, Illinois)	
Facility ID Nrs. 40702 and 40703)	FRN: 0003773595

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 2, 2011

Released: May 3, 2011

By the District Director, Chicago District Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Mattoon Broadcasting Company (“Mattoon Broadcasting”), licensee of Stations WLBH(AM) and WLBH-FM, in Mattoon, Illinois, apparently willfully and repeatedly violated section 73.49 of the Commission’s Rules (“Rules”)¹ by failing to enclose Station WLBH’s towers within effective locked fences or other enclosures and section 73.1125(a) by failing to maintain a management and staff presence at the stations’ main studio. We conclude that Mattoon Broadcasting is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000).

II. BACKGROUND

2. On July 21, 2010, during normal business hours, an agent from the Enforcement Bureau’s Chicago Office (“Chicago Office”) attempted to inspect Stations WLBH and WLBH-FM at their main studio at 5746 E. Country Road 1000 N, in Mattoon, Illinois. The agent found that the main studio building was locked and no one answered when the agent rang the doorbell. The agent called the stations’ telephone number; no one answered and no voice mail system picked up. In the parking lot outside the main studio building, the agent observed two vehicles, both of which had flat tires.

3. On the morning of July 22, 2010, the agent attempted to contact the stations by telephone and again no one answered and there was no voice mail. In the afternoon, the agent returned to the main studio to inspect the stations and found that the building was still locked. The agent rang the doorbell, knocked on the door, and still no response. The only cars parked in the parking lot were the two cars with flat tires observed the previous day. Before leaving the main studio, the agent tried, with no success, to reach someone at the station by telephone.

4. After leaving the main studio on July 22, 2010, the agent inspected the series-fed, four-

¹ 47 C.F.R. §§ 73.49, 73.1125(a).

tower array used in the operation of AM Station WLBH. The agent observed that the fences surrounding each of the towers had either sections that were falling down or sections that were completely missing. In each case, the state of disrepair allowed unfettered access to the tower and there was no perimeter fence surrounding the property on which the towers were located.

5. On July 30, 2010, James Livesay, President and General Manager of Mattoon Broadcasting, contacted the agent by telephone.² Mr. Livesay conceded that the fencing around the four towers had deteriorated and stated that he would replace the fencing right away. With regard to staffing at the main studio, Mr. Livesay reported that the individual who is usually at the main studio has had a significant number of absences for medical tests. Mr. Livesay did not provide any other explanation for the absence of personnel at the main studio on July 21, 2010 and July 22, 2010, and did not indicate to the agent that he had any other station employees.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.³ The term “willful” as used in section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁵

7. Section 73.49 of the Rules states that antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures.⁶ The agent’s inspection of Station WLBH’s series-fed, four-tower array on July 22, 2010, revealed that none of the four towers was enclosed within an effectively locked fence or other enclosure. Mr. Livesay admitted to the agent that the fencing surrounding the towers had deteriorated. Accordingly, based on the evidence before us, we find that Mattoon Broadcasting apparently willfully and repeatedly violated section 73.49 of the Rules by failing to maintain Station WLBH’s antenna towers within effective locked fences or other enclosures.

8. Section 73.1125(a) of the Rules requires broadcast stations to maintain a main studio.⁷ The Commission has interpreted section 73.1125 (also known as the “Main Studio Rule”) to require, among other things, that a licensee maintains a “meaningful management and staff presence” at its main studio.⁸

² The agent obtained Mr. Livesay's name from an application Mattoon Broadcasting filed with the FCC. The e-mail address provided in the application no longer was valid, but the agent obtained a telephone number for Mr. Livesay through additional research and left a voice mail message for him at that number on July 30, 2010.

³ 47 U.S.C. § 503(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

⁶ 47 C.F.R. § 73.49.

⁷ 47 C.F.R. § 73.1125.

⁸ *Amendment of Section 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 F.C.C.R. 5024, 5026

(continued....)

Specifically, the Commission has found that a main studio “must, at a minimum, maintain full time managerial and full-time staff personnel.”⁹ Although management personnel need not be “chained to their desks” during normal business hours, they must “report to work at the main studio on a daily basis, spend a substantial amount of time there and...use the studio as a ‘home base.’”¹⁰

9. On July 21 and July 22, 2010, when an agent attempted to conduct an inspection at the main studio of Stations WLBH and WLBH-FM, the agent found that the building was locked and there were no station personnel present. Moreover, although Mr. Livesay reported that the main studio usually is staffed by an individual who has had many absences due to medical tests, a single staff person at the main studio does not constitute a “meaningful management and staff presence.” Accordingly, based on the evidence before us, we find that Mattoon Broadcasting apparently willfully and repeatedly violated section 73.1125(a) of the Rules by failing to maintain a full-time management and staff presence at the main studio for Stations WLBH and WLBH-FM during regular business hours.

10. Pursuant to *The Commission’s Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount is \$7,000 for violation of the AM fencing rule and \$7,000 for violation of the main studio rule.¹¹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹² Applying the *Forfeiture Policy Statement*, section 1.80, and the statutory factors to the instant case, we conclude that Mattoon Broadcasting is apparently liable for a \$14,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311, 0.314 and 1.80 of the Commission’s Rules, Mattoon Broadcasting Company is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for violations of sections 73.49 and 73.1125(a) of the Rules.¹³

12. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission’s Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Mattoon Broadcasting Company **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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(1988), *erratum issued*, 3 FCC Rcd 5717 (1988) (correcting language in n.29).

⁹ See *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991) (“*Jones Eastern*”) (noting that, “[t]his is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered ‘meaningful.’”) *clarified*, 7 FCC Rcd 6800 (1992) (“*Jones Eastern II*”). See also *Birach Broadcasting Corporation*, Notice of Apparent Liability, 25 FCC Rcd 2635 (Enf.Bur. 2010).

¹⁰ *Jones Eastern II*, 7 FCC Rcd at 6802.

¹¹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.49, 73.1125(a).

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁴ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Mattoon Broadcasting Company will also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

14. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Chicago District Office, 1550 North Northwest Highway, Room 306, Park Ridge, IL 60068 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to NER-Response@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Mattoon Broadcasting Company at P.O. Box 1848, Mattoon, IL 61938-1848.

FEDERAL COMMUNICATIONS COMMISSION

James M. Roop
District Director
Chicago District Office
Northeast Region
Enforcement Bureau

¹⁴ See 47 C.F.R. § 1.1914.